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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/619,247	07/11/2003	Gerhard Schnabel	09879-00031-US	5869
23416	7590	12/14/2005		EXAMINER
CONNOLLY BOVE LODGE & HUTZ, LLP				CLARDY, S
P O BOX 2207				
WILMINGTON, DE 19899			ART UNIT	PAPER NUMBER
			1617	

DATE MAILED: 12/14/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/619,247	SCHNABEL ET AL.	
Examiner	<b>Art Unit</b>		
S. Mark Clardy	1617		

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

1)  Responsive to communication(s) filed on 05 April 2004.

2a)  This action is **FINAL**.                            2b)  This action is non-final.

3)  Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

4)  Claim(s) 1-19 is/are pending in the application.  
4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.  
5)  Claim(s) \_\_\_\_\_ is/are allowed.  
6)  Claim(s) 1-19 is/are rejected.  
7)  Claim(s) \_\_\_\_\_ is/are objected to.  
8)  Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

9)  The specification is objected to by the Examiner.

10)  The drawing(s) filed on \_\_\_\_\_ is/are: a)  accepted or b)  objected to by the Examiner.

    Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

    Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)  The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

12)  Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a)  All b)  Some \* c)  None of:  
1.  Certified copies of the priority documents have been received.  
2.  Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3.  Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

1)  Notice of References Cited (PTO-892)  
2)  Notice of Draftsperson's Patent Drawing Review (PTO-948)  
3)  Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date 7/11/03 4/5/04

4)  Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_ .

5)  Notice of Informal Patent Application (PTO-152)

6)  Other: \_\_\_\_

Claims 1-19 are pending in this application.

Applicants' claims are drawn to a liquid adjuvant composition (claims 1-7) comprising an alkoxylated dialkylaryl surfactant of formula I in combination with one or more fatty acid esters<sup>1</sup>:



Wherein      Ar = aryl which is substituted with at least two C<sub>1-30</sub> alkyl radicals, and

R<sup>3</sup> = H, C<sub>1-30</sub> hydrocarbon, sulfonate, phosphonate, or acyl.

Also claimed are methods of making the liquid adjuvants (claim 8), agrochemical<sup>2</sup> compositions (claims 10-13) and methods of making them (claim 19), methods of using the agrochemical compositions (claims 14-16), and uses (claims 9, 17, and 18).

35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

Claims 9, 17, and 18 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter, i.e., the use of a composition. These claims have not been treated further on the merits.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

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<sup>1</sup> Claim 6: rapeseed oil

<sup>2</sup> Claim 12: sulfonylurea herbicides

Claims 1-8, 10-16, and 19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Yoshida et al (US 5,411,932).

Yoshida et al teach the formulation of a sulfonylurea herbicide (nicosulfuron) in an oil based suspension with urea, a vegetable oil, and a surfactant (abstract). The vegetable oil may be rapeseed oil (col 3, lines 37-46; also examples 14, 16, and claim 7), and the surfactant may be polyoxyethyleneglycol alkyl ether, polyoxyethylene lauryl ether, polyoxyethylene alkyl ether, polyoxyethylene alkylaryl ether, or polyoxyethylene fatty acid ester, among others (col 3, lines 47-65)

Thus it would have been *prima facie* obvious to the ordinary artisan at the time the invention was made to have combined applicants' adjuvant components for use with a sulfonylurea herbicide because the prior art teaches the utility of aryl polyalkoxylated surfactants with fatty acid esters such as rapeseed oil.

No unobvious or unexpected results are noted; no claim is allowed.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

Any inquiry concerning this communication or earlier communications from the examiner should be directed to S. Mark Clardy whose telephone number is 571-272-0611. The examiner can normally be reached on 7:30-5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Sreenivasan Padmanabhan can be reached on 571-272-0629. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



S. Mark Clardy  
Primary Examiner  
Art Unit 1617

December 7, 2005